

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA
C.W.P. No: 919 of 2005

Date of decision: 6.3.2007

M/s Inderjit Singh and another

Petitioners

Versus

State of H.P. and others

Respondents.

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?¹

**For the Petitioners: Mr. J.S. Bhogal, Senior Advocate, with
Mr. Suneet Goel, Advocate**

**For the Respondents: Mr. M.S. Chandel, Advocate General with
Mr. R.M. Bisht, Deputy Advocate General.**

Per Deepak Gupta, J.

The petitioners by means of this writ petition have prayed that the excess tax paid by them, orders for refund whereof have been made by the assessing authorities be ordered to be refunded to them alongwith interest as legally admissible in terms of Section 18 of the H.P. General Sales Tax Act (GST). Section 12-A of the H.P. G.S.T. Act provides that every person making payment or discharge of any liability involved in the execution of works contract shall deduct an amount not

¹ ***Whether the reporters of the local papers may be allowed to see the Judgment?***

exceeding four percentum from the bills or invoices raised by the works contractor. The person making any payment to a work contractor is bound to make deduction on account of sales tax at the rate of 4 percentum from the amount paid to the contractor and deposit the same with the Sales Tax Authorities. Obviously this tax deducted at source has to be taken into account at the time of final assessment of the returns filed by the contractor.

In the present case the various returns of the petitioners were assessed as follows:-

Assessment Year	Date of assessment	Excess determined
1996-97	3.10.2002	Rs.2, 42,000-00
1997-98	31.8.2002	Rs. 88,996-00
1999-2000	27.9.2002	Rs. 92,107-00
2000-2001	20.11.2003	Rs. 89,029-00
2001-2002	15.2.2004	Rs.2, 45,216-00
2002-2003	23.2.2004	Rs. 84,000-00

Despite the assessment orders having been passed and the excess amount of tax recovered from the petitioners having been determined, this excess amount was not refunded to the petitioners. The petitioners made various representations for refund of the amount. 19 such representations have been made between 18.10.2002 till 22.5.2004. Finally, the petitioners got a legal notice issued through their counsel to the respondents on 10th

July, 2004. The respondents did not respond to any of these notices nor did they refund the amount to the petitioners. Another notice was sent on 13th May, 2005, but to no avail and finally the petitioners were compelled to file the present writ petition on 9th September, 2005.

On 16.11.2005 when the writ petition came up before this court, the court passed the following order:-

“Notice. Mr.D.C.Pathik, learned Additional Advocate General, appears and waives service of notice on the respondents. Reply, if any, within five weeks.

In the meantime, respondents are directed that in case refund is due and payable to the petitioners, the same shall be paid to them on or before the next date of hearing.

Copy DASTI on usual charges.”

Surprisingly, the respondents did not comply with the letter and spirit of the order and despite the fact that the excess amount which had been paid by the petitioners as tax had been determined, they did not refund the same, but instead initiated suo motu proceedings under Section 31(1) of the H.P.G.S.T. Act on 14.12.2005. Even these proceedings ended in favour of the assessee on 3.4.2006. It was only thereafter that the principal amount as determined was refunded to the

petitioners. The petitioners now claim that they should be paid interest in terms of Section 18 of the H.P. General Sales Tax Act for the period the respondents have wrongly withheld the amount due and payable to them.

Section 18(3) and (4) of the H.P.G.S.T. Act which is relevant for the purpose of this writ petition reads as follows:-

“18. (1) x x x x x x x x x x x x x x x x x x x

(2) x x x x x x x x x x x x x x x x x x x

(3) Where any amount required to be refunded by the assessing authority to any person by virtue of an order issued under this Act is not refunded to him within ninety days of the date of the order, the dealer shall be entitled to get simple interest on such amount at the rate of one percentum per month from the date immediately following the date of expiry of the said period for a period of one month and thereafter at the rate of one and a half percentum per month till the refund is made:

Provided that for the purpose of calculation of the interest, if part of a month exceeds fifteen days, shall be considered as one month and any amount less than one hundred rupees but exceeds fifty rupees shall be considered as one hundred rupees.

(4) If the delay in allowing refund within the aforesaid period of ninety days is for reasons beyond the control of the assessing authority or attributable to the dealer, whether wholly or in part,

the period of such delay shall be excluded from the period for which interest is payable.

(5) x x x x x x x x x x x x x x x x x x

(6) x x x x x x x x x x x x x x x x x x

(7) x x x x x x x x x x x x x x x x x x x”

A bare perusal of the aforesaid provision makes it clear that if there is a delay in the refund of the amount and the delay is not attributable to the dealer nor is the delay for reasons beyond the control of assessing authority, then the dealer is entitled to and the assessing authority is liable to pay interest at the rate of 1% per month for one month and 1.5% per month thereafter on the expiry of 90 days from the passing of the order.

In the reply filed by the State the only justification given for not refunding the amount is that the matter was taken up suo motu by the revising authority under Section 31(1) of the Act. This defence is totally devoid of any merit. The assessments were made from 3.10.2002 to 23.2.2004. The assessee had sent as many as 19 letters and two legal notices. Neither any appeal was filed by the department nor any contest was raised by it. It was only after the writ was filed and the orders quoted above were passed by this court that this suo

motu revisional power was exercised. We have no doubt in our mind that the exercise of this power was totally malafide and only to create an excuse for the delayed payment. Even the revising authority has clearly held that there is no need to interfere with the orders of assessing authority and found them to be correct. Therefore, the petitioners cannot be deprived of their claim to interest in terms of Section 18 of the H.P.G.S.T.

In view of the above discussion we allow this writ petition and hereby direct the respondents to pay interest to the petitioners in terms of Section 18 of the H.P.G.S.T. Act to be calculated for each assessment year as per the date of assessment after excluding the period of 90 days as provided under Section 18. The assessing authority shall calculate the interest and the entire interest shall be paid to the petitioners positively within 2 months from today. Keeping in view the fact that the petitioners have been unnecessarily dragged to litigation, we burden the respondents with costs of Rs.5,000/- which shall also be paid to the petitioners within 2 months from today.

(Deepak Gupta),J.

March 6, 2007(K)

(Surinder Singh),J.